C.D. 308 (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No. 1545/2004

PETITIONERS : 1. Smt. Jyoti Dixit,
W/o Shri Vinod Kumar Dixit,
Aged about 34 years.
2. Vinod Kumar Dixit,
S/o T. P. DIXIT
Aged about 39 years.
3. Smt. Surekha Dixit,
W/o Shri Vinay Dixit,
Aged about 32 years.
All R/o Sadar Bazar,
Bilaspur (C.G.)

P. R. No. 1399 dt. ... Presented by Shri ... dated ... 12 ...

-Versus –

RESPONDENTS : 1. Board of Revenue, Chhattisgarh,
Through its Member Judge,
Bilaspur (C.G.).
2. Sub Divisional Officer (Revenue),
Bilaspur (C.G.).
3. Tahsildar,
Bilaspur (C.G.).
4. Shri Shaukat Ali,
S/o Shri Jiwaji Bhai,
R/o Khaparganj, Bilaspur (C.G.).

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT, ORDER OR DIRECTION TO DO JUSTICE IN THE MATTER.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(90)

आदेश पत्रक

मामला क्रमांक WP 1545/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

28.06.2004

Shri Rajeev Shrivastava, counsel for the petitioners.

Shri Satish Gupta, Dy. Govt. Adv. for respondent No.1 to 3.

Shri M.D. Sharma, counsel for respondent No.4.

This order shall govern the disposal of the petitions namely Writ Petition No.1409/2004 between Smt. Rajeshwari Chaturvedi & another Vs. Board of Revenue, Chhattisgarh & others, Writ Petition No.1410/2004 between Satish Chand Jain Vs. Board of Revenue, Chhattisgarh & others, Writ petition No 1412/2004 between Alok Kumar Vs. Board of Revenue Chhattistgarh & others, Writ petition No.1411/2004 between Smt. Veena Tiwari & another Vs Board of Revenue Chhattisgarh & others and Writ Petition No.1545/2004 between Smt. Jyoti Dixit & others Vs. Board of Revenue, Chhattisgarh & others, since all these writ petitions relate to the same issue and impugn the order-date 23.03.2004 passed by the Board of Revenu Chhattisgarh, Bilaspur therefore, they are being dispose of by this common order.

In all these writ petitions return has already been filed on behalf of respondent No.4.

The circumstances leading to filing of all these writ petitions are that respondent No.4 herein moved an application before the Tehsildar, Bilaspur under Section

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आदेश पत्रक

मामला क्रमांक 1545/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

250 of the Land Revenue Code, 1954 requesting therein that he is Bhuswami of the land bearing Khasra No.724/1 area 0.24 acres situated at Village Tifra (Bharti Nagar) and the possession of the petitioners herein over the said land are unauthorized, therefore, the possession of the same may be given to him. The Tehsildar after considering the arguments of the parties vide order-dated 09.07.2001 rejected the application by holding that the application is not maintainable under Section 250 of the Code. Being aggrieved by the order of the Tehsildar, respondent No.4 herein preferred an appeal before the Sub Divisional Officer, Bilaspur who also after hearing the parties dismissed the appeal vide order dated 09.03.2003 and held that in order to seek relief under Section 250 of the Code, it is necessary that the applicant who is seeking relief must be the Bhuswami of the land in dispute, the demarcation of the land must be established undisputedly and it shall also be clear that on which date the applicant was dispossessed from the land in dispute and since the applicant could not be able to prove all these facts, therefore, the applicant was not entitled for any relief and appeal was dismissed. Again aggrieved by the order of Sub Divisional Officer, Bilaspur respondent No.4 had preferred a second appeal before the Board of Revenue Chhattisgarh, Bilaspur, which was registered as Revenue Appeal No.537/A-70/2002-2003.

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(92)

आदेश पत्रक

मामला क्रमांक 1545/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The learned Board of Revenue after hearing the counsel for the parties allowed the appeal and remanded the case back to the Tehsildar with a direction to conduct an enquiry on the application of respondent No.4 herein and he should be granted relief as prayed in the application.

I have heard the learned counsel for the parties.

Learned counsel for the petitioners argued that the learned Board of Revenue while remanding the case back given a direction to the Tehsildar to act on the application filed by respondent No.4 herein and relief as prayed in that application be granted to respondent No.4. Counsel further submits that this direction of the learned Board of Revenue is patently illegal and perverse. The Board of Revenue was not authorized to give such a direction while remanding the case back contrary to the provisions contained in Section 44 of the Code.

On the other hand learned counsel for respondent No.4 tried to support the order of the Revenue Board.

Having heard the learned counsel for the parti and having regard to the facts and circumstances of t case, I am of the opinion that the direction/observatic of the learned Board of Revenue to the extent that to grant relief as prayed in the application is not correct instead thereof the learned Revenue Board ought to have directed the Tehsildar to conduct an enquiry on the application of respondent No.4 herein in accordance with

पीछे देखिये

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आदेश पत्रक

मामला क्रमांक WP 1545/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the law and to pass appropriate order after conducting enquiry in accordance with law.

Therefore, in view of the above all the above writ petitions are allowed and the order dated 23.03.2004 passed by the Board of Revenue is modified to the extent that the Tehsildar to conduct an enquiry on the application of respondent No.4 and pass appropriate order in accordance with the law.

At the time of passing of the order the Tehsildar will be required to decide following points also:-

- Whether on the date of application respondent No.4 herein was the Bhuswami of the land for which he had filed the application and the date when he was dispossessed from the said land.

With the aforesaid directions and observations, these petitions are disposed of.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

Roshan/-

[पीछे देखिये